THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

9th AUGUST, 2005

WRIT PETITION No.3398 OF 2005

M/s.Supra Marketing Agencies, Secunderabad. ….. Petitioner

And

The Commercial Tax Officer, Hyderabad,

and others …..Respondents

THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3398 OF 2005

ORDER: (per BRSR, J)

The petitioner's assessments for the years 1998-99 and 1999-2000 under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") were completed. Similarly, the assessment for the year 1999-2000 under the Central Sales Tax Act, was also completed and the following amount of tax was levied for the said period.

1998-1999 Rs.1,91,491-00 (APGST)

1999-2000 Rs.8,30,382-00 (APGST)

1999-2000 Rs. 22,253-00 (CST)

TOTAL: Rs.10,44,326-00

Pursuant to the order of assessment, which has attained its finality since no appeal has been preferred by the dealer, the respondents raised the demand requiring the petitioner to pay the same. The petitioner vide letter dated 18-08-2003 replied that the entire tax for the above period was deducted at source by the third respondent-A.P. Backward Classes Cooperative Finance Corporation Limited, in accordance with the letter of the Deputy Commissioner (Commercial Taxes), Panjagutta Division, Hyderabad, dated 17-12-1998. The respondents-authorities approached the third respondent-Corporation vide letter dated
29-08-2003 requesting them to pay the tax so recovered from the petitioner at source, to which, the third respondent Corporation replied through its letter dated 11-09-2003 that there is a dispute between the petitioner and the third respondent resulting in appointment of an arbitrator and the same is, now, the subject matter before the City Civil Court, Hyderabad. Thereafter, the respondents insisted the petitioner to pay the arrears and the same has given rise to the cause for filing this writ petition.

Sri S.Ravi, the learned counsel for the petitioner, relying on the letter dated 17-12-1998 addressed by the Deputy Commissioner (Commercial Taxes), Panjagutta Division, Hyderabad, to the Managing Director of A.P. Backward Classes
Co-operative Finance Corporation Limited, Hyderabad, submits that the sole responsibility lies upon the third respondent to pay the tax payable by the petitioner since the same has been deducted at source.

We are unable to agree with the submission made by the learned counsel for the petitioner for more than one reason. We find it difficult to discern as to how and under what authority the Deputy Commissioner (Commercial Taxes), could have addressed such a letter to the third respondent-Corporation. There is no provision under the Act, which enables the Deputy Commissioner (Commercial Taxes), to

address such a letter to the third respondent-Corporation. The letter has no statutory value and it cannot be equated to that of the Circular instructions issued by the Commissioner in purported exercise of the powers conferred under Section 42A of the Act. The power to issue circular instructions is conferred upon the Commissioner, who from time to time may issue such orders, instructions or directions, not inconsistent with the provisions of the Act or the Rules made thereunder, to his subordinate officers as he may deem fit for the proper administration of the Act. The Deputy Commissioner of Commercial Taxes cannot be equated to that of the Commissioner, who alone is authorized to exercise powers conferred under the Act nor the third respondent-Corporation could be considered as a subordinate officer to the Commissioner of Commercial Taxes. In the circumstances, we find it difficult to rely upon the said letter dated 17-12-1998 for the purpose of granting any relief to the petitioner.

There is no dispute whatsoever that the primary responsibility to pay the tax under the provisions of the Act lies with the dealer. The petitioner failed to discharge his statutory obligation by paying the tax due. The petitioner even did not challenge the order of assessment. The respondents-authorities are in no way concerned with the dispute between the petitioner and the third respondent in respect of which, an arbitration award is stated to have been passed, which is again, the subject matter of proceedings in the City Civil Court. It is also required to note that the Commercial Taxes Department is not a party to the arbitration. Therefore, it is not bound by the same.

Viewed from any angle, we find no merit in this writ petition and the same shall accordingly stand dismissed. Consequently, the interim order earlier granted by this Court shall stand vacated.

However, having regard to the facts and circumstances of the case, we direct the respondents not to take any coercive steps for realization of the amounts from the petitioner for a period of twelve weeks from today in order to enable the petitioner to pay the amount. There shall be no order as to costs.

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(B.SUDERSHAN REDDY, J)

(RAMESH RANGANATHAN, J)

9th AUGUST, 2005.

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